

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWARD KLEPEIS,

Plaintiff,

10-CV-363 (CS) (PED)

- against -

J & R EQUIPMENT, INC., J & R EQUIPMENT INC.
401(k) PLAN AND TRUST, and JOSEPH T. FALANGA,

**ORDER
ADOPTING REPORT
AND RECOMMENDATION**

Defendants.
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Seibel, J.

Before the Court is the Report and Recommendation of Magistrate Judge Paul E. Davison dated May 31, 2012 (the "R&R"), in which he recommends that this Court enter judgment for Plaintiff in the total amount of \$76,513.68. (Doc. 91.)

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific," "written," and submitted "[w]ithin 14 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2); *accord* 28 U.S.C. § 636(b)(1)(C).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a *de novo* review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C); *see* Fed. R. Civ. P. 72(b)(3) ("The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions."). The district court may adopt those portions of a report and recommendation to which no timely

objections have been made, provided no clear error is apparent from the face of the record. *See Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72 advisory committee's note (b).

No objections to the R&R have been filed.¹ I have reviewed it for clear error, and find none. Accordingly, I adopt the R&R as the decision of the Court. The Clerk of Court is respectfully directed to: 1) enter judgment in favor of Plaintiff in a total amount of \$76,513.68, consisting of \$17,622.03 in prejudgment interest, \$52,268 in attorney's fees and costs, and \$6,623.65 in remaining principal; 2) send this Order to the parties in the usual fashion and as directed in the footnote below; and 3) close the case.

SO ORDERED.

Dated: July 10, 2012
White Plains, New York



CATHY SEIBEL, U.S.D.J.

¹ The Court is aware that Defendants' counsel has been experiencing medical problems. If those problems have prevented the filing of objections to the R&R, Defendants may so advise the Court by letter no later than 14 days from the date of this Order. The Clerk is directed to mail this Order to the Defendants themselves (not just counsel) at the addresses set forth in paragraphs 5-7 of the Complaint, (Doc.1). If Plaintiff's counsel is aware of better addresses for any of the Defendants, he shall so advise the Court.